

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, (IBT), LOCAL 957  
(UNITED PARCEL SERVICE)

Case 09-CB-255762

and

RYAN BLACK, an Individual

*Erik Brinker, Esq.*,  
for the General Counsel.  
*John R. Doll, Esq.*  
(*Doll, Jansen & Ford*),  
for the Respondent.

DECISION

STATEMENT OF THE CASE

KIMBERLY R. SORG-GRAVES, Administrative Law Judge. On February 4, 2020, Ryan Black, an individual, (Black) filed Case 09-CB-255762 with Region 9 of the National Labor Relations Board (Board), pursuant to Section 10(b) of the National Labor Relations Act (Act), 29 U.S.C. § 151 et. seq., and Section 102.15 of the Rules and Regulations of the Board, alleging that the International Brotherhood of Teamsters, Local 957 (Respondent or Union) breached its duty of fair representation, in violation of Section 8(b)(1)(A) of the Act, by failing to adequately provide information to him regarding the status of his filed grievances with Respondent. (GC Exh. 1(e).) On April 24, 2020, the Region issued the complaint in this matter. (GC Exh. 1(e).)<sup>1</sup>

On August 26, 2020, I heard this matter via Zoom videoconferencing technology due to the compelling circumstances caused by the Covid-19 pandemic and in the absence of objections by the parties, under the circumstances, to the procedures utilized to safeguard due

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<sup>1</sup> Abbreviations used in this decision are as follows: “Tr.” for the Transcript, “GC Exh.” for the General Counsel’s exhibits, “GC Brief” for General Counsel’s posthearing brief, “R. Exh.” for Respondent’s exhibits, and “R. Brief” for Respondent’s posthearing brief. Although I have included citations to the record to highlight particular testimony or exhibits, my findings and conclusions are not based solely on the highlighted evidence, but also upon my review and consideration of the entire record, encompassing credible testimony, evidence presented, and logical inferences from the evidence. *Double D Construction Group*, 339 NLRB 303, 303–305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001) (citing *Shen Automotive Dealership Group*, 321 NLRB 586, 589 (1996)), enfd. 56 Fed.Appx. 516 (D.C. Cir. 2003). Credibility findings regarding any witness are not likely to be an all-or-nothing determination and I may believe that a witness testified credibly regarding one fact but not on another. *Daikichi Sushi*, 335 NLRB at 622.

process in this forum. I afforded all parties a full opportunity to appear via videoconference, introduce evidence, examine and cross-examine witnesses, and argue orally on the record.<sup>2</sup> General Counsel and Respondent filed posttrial briefs in support of their positions.

After carefully considering the entire record, including the parties' briefs and my observation of the demeanor of witnesses, I make the following

## FINDINGS OF FACT

### I. JURISDICTION AND LABOR ORGANIZATION STATUS

It is admitted and I find that Respondent, International Brotherhood of Teamsters, Local 957, is a labor organization within the meaning of Section 2(5) of the Act. (GC Exh. 1(e).)

At all material times, the Employer, United Parcel Service, is a corporation operating throughout the United States, with a place of business and office facility, involved herein, located in Dayton, Ohio. Operations at the Dayton facility include receipt, delivery, and shipping of packaged goods. In conducting these operations during the calendar year prior to the issuance of the complaint, the Employer received gross revenues in excess of \$50,000 from the shipping of goods directly from the State of Ohio to locations outside of Ohio. It is admitted and I find that Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. (GC Exh. 1(e).)

Based on the foregoing, I find that this dispute affects commerce and the Board has jurisdiction of this case, pursuant to Section 10(a) of the Act.

### II. ALLEGED UNFAIR LABOR PRACTICES

#### a. *Background*

Ryan Black has worked for United Parcel Service (UPS) for 27 years as a delivery truck driver. (Tr. 41.) In those 27 years, Black has filed around 720 grievances with UPS, through his representative labor union, the Respondent. (Id.) Respondent presented evidence that the union has been responsive to Black's grievances in the past and at least some of Black's grievances, specifically in the past few years, have been handled by the current union officials. (R. Exh. 1-4.) Black also testified that, generally, he has been satisfied with the resolutions of such grievances, including his recent grievance regarding his termination, though he is not particularly

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<sup>2</sup> At the hearing, General Counsel amended the complaint to clarify that "Respondent" refers to Matt Thomes in paragraph 6(a), Kenny Howard in paragraphs 6(b) and 6(c), and both Thomes and Howard in paragraph 6(d) of the complaint. (Tr. 30-31.) Paragraph 6(b) was also amended to clarify that the communication by telephone was via voicemail message. (Id.) Respondent admitted that, as stated in paragraph 6(c), Black did send a text message to Howard, but they still denied that the message contained information regarding the status of Black's grievances. (Tr. 34.) Respondents otherwise maintained its denial of the claims in paragraph 6(a) through 6(d). (Id.) Respondent also objected to the timing of the amendment, being made at such a late date and during the hearing, arguing that this did not give them enough time to adequately prepare a defense based on the new information. (Tr. 32.) I allowed the amendment but also left the record open at the end of the hearing for Respondent to provide additional documents to remedy any prejudice caused as a result of General Counsel's failure to amend the complaint earlier. (Tr. 35, 290-292.) No party filed a motion to submit additional records.

satisfied with how long the grievance process takes. (Tr. 87–88.) Some of Black’s previous grievances took around 2 years to resolve, and Black testified that he has no recollection of whether he contacted union representatives regarding the timing of those grievances. (Tr. 97–98.)

5           Kenny Howard is the current President and Business Representative for Respondent, responsible for representing UPS bargaining unit employees in several facilities. (Tr. 189.) Howard has held these positions for about 5 years, and before that he was a steward in the Springfield UPS facility for about 22 years and worked in other UPS facilities for about 9 years before that. (Tr. 191–193.) Matt Thomes is one of the current stewards for the West Carrollton  
10       facility where Black works and is Black’s main point of contact for the union. (Tr. 50.) The Union also has monthly meetings to discuss important member matters, which Black does not attend because they are held on Sundays, but stewards are expected to relay the information discussed to members who do not attend the meetings. (Tr. 135–136, 285–286.) Additional  
15       information about union matters is available through social media including information posted by Teamsters United for Democracy or Teamsters for Democracy, TDU, and members can download an IBT Application. (Tr. 287.)

          The grievances at issue here are excessive overtime grievances, referred to during the hearing as “9.5 grievances.” A bargaining unit delivery driver may file a 9.5 grievance when the driver works over 9 1/2 hours in a day for 3 days in a 5-day workweek, and they can receive  
20       penalty pay pursuant to Article 37 of the collective-bargaining agreement. (Tr. 43, 49; GC Exh. 2.) Typically, an employee files a grievance with the steward, who passes it on to the President/Business Representative, who eventually coordinates with several different parties to schedule hearings. (Tr. 49, 207.) Once a hearing date is scheduled, the steward will pick which grievances will be heard and contact the grievants to tell them what time to arrive at the hearing,  
25       if their participation at the hearing is necessary. (Tr. 117, 245.) The hearings usually begin around 7 a.m. and end earlier than 9 a.m., as they may not extend into work hours, and during that time they will hear as many grievances as they can. (Tr. 218.)

          Processing of excessive overtime pay grievances for bargaining unit members was temporarily on hold for several months in 2019 due to an arbitrator’s pending decision regarding  
30       how to interpret the Article 37 provision. (Tr. 210–212.) Howard testified that he did not formally tell the employees about the arbitration and how it would delay grievance processing, but he testified that the stewards were aware of this and that if an employee called him and asked, he would openly tell them. (Tr. 251.)

*b. Events of July 26, 2019 through August 13, 2020*

35           Black filed excessive overtime pay grievances with the Union on July 26, 2019, (GC Exh. 3(a)), and September 17, 2019. (GC Exh. 3(b).) After filing these grievances with Thomes, Black talked to Thomes over the phone multiple times per week, and in person on days they saw each other. The duration of the phone calls ranged from only a few minutes long to the longest call lasting about an hour. (GC Exh. 5.) Black testified that they would discuss issues related to  
40       work and he would almost always ask Thomes about the status of his grievances. (Tr. 51–52.) Black testified that each time Thomes would respond the same way, that he had given the grievances to Howard, who then has the discretion to schedule hearings, and the only information he had was that the grievances were pending at that moment. (Tr. 51–52.) Thomes

was never able to provide Black with specific information on the order that grievances were to be heard. (Tr. 58.) Thomes did inform Black that he often talked with Howard regarding the status of Black's grievances and Howard told Thomes that the grievances were still pending with no date for a hearing yet. (Tr. 128.)

5 Black testified that on September 20, 2019, he called Howard and left a voicemail asking Howard to call him back as soon as possible about the status of his grievances. (Tr. 66-67; GC Exh. 4(a).) Howard testified that he has a regular, daily procedure for checking his phone to ensure that he does not neglect to respond to any missed calls or texts, but nevertheless he does not recall ever receiving a call or voicemail from Black about this matter. (Tr. 221, 234.) Black's  
10 phone records indicate that he did make a phone call to Howard on this date that is logged as 2 minutes long, though it does not indicate whether Black left a voicemail, and Respondent contends that Black's phone records likely round up to the next whole minute when recording phone calls. (GC Exh. 5(c); R. Brief 12.) Respondent comes to this conclusion by noting that all phone calls on Black's bill only have full minute charges, which indicates that even though the  
15 phone call to Howard is logged as 2 minutes, it could have only lasted 61 seconds. Respondent also provided extensive records for Howard's cell phone, but the records do not indicate when a voicemail is received. (R. Exh. 11.) Black never tried to call Howard again regarding the grievances, which he testified was because he believed that the proper procedure required him to contact the steward, rather than the President of the union. (Tr. 133.)

20 On January 28, 2020, Black sent a text message to Howard expressing his frustration with the lack of progress on his filed grievances and that Howard had not returned his call. (GC Exh. 6.) In the text, Black wrote "[t]his is the last time I contsct [sic] you regarding my grievances" and subsequently sent photo screenshots of the Labor Board's website showing locations and contact information for local Board offices. (Id.) Black testified that by sending the photos, he  
25 was trying to convey that if Howard did not respond to him, he was going to contact the Labor Board. (Tr. 75-76.) Howard understood this series of text messages to mean that Black was planning on filing a lawsuit against the union. In such situations, Howard has been advised by counsel to cease communication with the employee so that he cannot be accused of threatening or intimidating the employee in his response. (Tr. 236.)

30 Howard never responded to Black's text message and on February 4, 2020, Black filed charges, alleging that the Union breached its fiduciary duty and duty of fair representation by failing to provide Black with information regarding his grievances. (GC Exh. 1(e).)

The record does not reflect that Black sought information about his grievances again until August 13, 2020, when the two grievances at issue here were heard and deadlocked, awaiting the  
35 state panel. (Tr. 174-175.) Black testified that he was not informed that the grievances were going to be heard and did not attend the grievance hearing. (Id.) Black learned the grievances had been heard from coworkers who received text messages that their grievances were upheld and were being paid. (Id.) Black then contacted Thomes, who was present at the grievance local panel hearing, and he told Black that his grievances were heard and deadlocked. (Id.) Thomes  
40 did not inform Black ahead of the hearing that his grievances would be heard. (Id.) Black admitted, however, that a grievance can be resolved without his presence. (Tr. 117.)

## ANALYSIS

## I. APPLICABLE LEGAL STANDARD

Section 8(b)(1)(A) of the Act states that labor organizations shall not “restrain or coerce . . . employees in the exercise of rights guaranteed in” Section 7 of the Act. It is well established  
 5 that this section creates a duty of fair representation for a union, when acting as the exclusive bargaining representative for bargaining unit members. See *Ford Motor Co. v. Huffman*, 345 U.S. 330, 337 (1953); *Miranda Fuel Co., Inc.*, 140 NLRB 181, 184 (1962); *Steele v. Louisville & N.R. Co.*, 323 U.S. 192, 194 (1944); *Vaca v. Sipes*, 386 U.S. 171, 177 (1967). When a union is the exclusive representative of employees, they have great power over employees’ ability to  
 10 enforce their rights under the Act, and so they must act in good faith. *Auto Workers Local 909 (General Motors Corp. – Powertrain)*, 325 NLRB 859, 864 (1998).

The Supreme Court has held that unions have broad discretion in carrying out their representational duties and in determining whether to pursue an employee’s grievance and in what manner, so long as their actions are not “arbitrary, discriminatory, or in bad faith.” *Letter Carriers Branch 6070 (Postal Service)*, 316 NLRB 235, 236 (1995); *Air Line Pilots Association, International. v. O’Neill*, 499 U.S. 65, 65 (1991); *Ford Motor Co.*, above at 333; *Vaca*, above at 190. The Court in *O’Neill* emphasized that the examination of a union’s actions must be “highly deferential” to allow the union to effectively carry on their tasks and objectives in the way they choose. The Board has frequently maintained that it is inappropriate for the Board to interfere  
 20 with internal union decision-making and procedures. See, e.g., *Raymond F. Kravitz Center for the Performing Arts*, 351 NLRB 143, 163 (2007) (“[T]he Board should not lightly interfere with the internal affairs of unions.”), *enfd.* 550 F.3d 1183 (DC Cir. 2008).

A union’s actions are arbitrary if they are “so far outside a ‘wide range of reasonableness’ as to be irrational.” *O’Neill*, above at 67 (citing *Ford Motor Co.*, above at 338). Actions of “mere negligence, poor judgment, or ineptitude in grievance handling” alone do not constitute a union’s  
 25 breach of the duty of fair representation. *Teamsters Local 692 (Great Western Unifreight)*, 209 NLRB 446, 447–448 (1974). A union’s abandonment or failure to pursue a grievance cannot be categorized as “mere negligence” if there is no rationale for such abandonment. See *Union of Security Personnel of Hospitals (Charity Hospital)*, 267 NLRB 974, 979 (1983) (a union’s failure to pursue an employee’s grievance with no reasonable excuse amounted to more than mere negligence); *Vaca*, above at 191 (“A union may not arbitrarily ignore a meritorious grievance or process it in a perfunctory fashion.”)

The duty of fair representation “does not require that every possible option be exercised or that a grievant’s case be advocated in a perfect manner.” *Truck Drivers, Local Union No. 355*,  
 35 229 NLRB 1319, 1321 (1977). Rather, the examination should focus on whether the union has acted fairly and reasonably, or if instead they have acted in an arbitrary manner. *Id.* The Board does not consider negligence or ineptitude to be a breach of the duty of fair representation because bargaining unit members can elect changes in internal union representation if they are unsatisfied with the performance of the current union officials. See *O’Neill*, above at 75.

40 The duty of fair representation also prohibits unions from willfully misinforming or willfully keeping employees uninformed about their grievances. See, e.g., *Union of Sec. Pers. of Hosps.*, above at 979 (withheld information from employee that the grievance was not filed in a timely manner and the employer is likely to refuse to hear the grievance). Employees also have a right

under the Act to access union documents and information regarding their grievances. See *National Association of Letter Carriers Branch 758*, 328 NLRB 952, 952 (1999) (employees requested copies of their grievance files to see if the grievances were being properly processed); *Letter Carriers Branch 529*, 319 NLRB 879 (1995) (union breached its duty of fair representation by refusing to provide charging party with photocopy of her grievance forms); *In Re Local 1657, United Food & Commercial Workers, Afl-Cio, Clc.*, 340 NLRB 329 (2003); *Local 909*, above at 865 (same).

## II. DID RESPONDENT VIOLATE THE DUTY OF FAIR REPRESENTATION?

The evidence presented at hearing does not meet the burden of establishing arbitrary conduct by Respondent in processing Black's grievances. Black has a right to access information regarding his grievances, but union officials did not willfully misinform or negligently fail to inform Black about the status of his grievances. Rather, through Thomes, Respondent gave Black all the information that was available at the time: that his grievances were still pending. Black admitted that Thomes never refused to talk to him about his grievances, and in fact Thomes talked to Black multiple times every week about the status of Black's grievances. (Tr. 131-132.)

Black's real complaint was not lack of information about his grievance, but dissatisfaction in the delays in processing his grievances, which does not constitute a breach of the duty of fair representation. No evidence was presented showing that the Respondent's failure to process grievances within a certain time period negatively affected the outcome of the grievances. Also, Respondent provided legitimate reasons for the delay in processing, such as the large number of grievances filed at the West Carrollton facility and the coordination of several individuals' schedules to agree upon a local panel hearing date, including management officials' schedules over which Respondent has no control. Furthermore, the processing of excessive overtime grievances was understandably put on hold for several months in 2019 pending the resolution of an arbitration dispute regarding the relevant collective-bargaining agreement provision. While Black may have learned about this arbitration earlier if he attended the union meetings or visited informational websites, he ultimately was told of the arbitration procedure by Thomes in reference to why his grievances had not been scheduled for a local panel hearing. Black knew that delays in scheduling some grievances for the local panel hearing are not outside the norm because one of Black's previous grievances took almost 2 years to be resolved. (Tr. 97-98.)

At the hearing, Black and Howard gave conflicting testimony regarding whether Black left a voicemail on Howard's phone inquiring about the status of his grievances. Based upon Black's telephone records and testimony, which I found no reason to question, I find that Black left Howard a voicemail message. Howard testified that he receives many phone calls and texts every day from bargaining unit members and it is reasonable that occasionally, he could inadvertently fail to return a call. Black testified that he only called Howard once. Assuming Black left a message and Howard somehow overlooked it and failed to return the call, I find that Howard's failure to return one call is at most "mere negligence, poor judgment, or ineptitude" and does not constitute to a breach of the duty of fair representation.

Black did not contact Howard again until the series of text messages he sent in January, which Howard understood as Black expressing his intent to file a charge against the union. The text message did not contain a specific request for information regarding Black's grievances, instead it was an expression of Black's frustration with what he perceived as a lack of communication thus far and pictures of the Board's website and contact information. I credit Howard's testimony that he read the text not as a request for information, but as a communication that Black was intending to file a charge against Respondent. Howard chose not to respond based upon his counsel's advice in such a situation. General Counsel contends that this action by Howard illustrates Respondent's arbitrary treatment of Black by refusing to communicate with him. Still, even if Black was in constant communication with Howard during this period, Howard likely would have told him exactly what Thomes had been telling Black, that his grievances were still pending and had not yet been scheduled for the local panel hearing. The record contains no evidence of any animosity between Howard and Black and Respondent provided evidence that Howard and Black have communicated via text message regarding Black's grievances in the past. (Tr. 223; R. Exh. 2.) I do not find that Howard's actions, based upon the circumstances, constitutes discriminatory or arbitrary conduct.

Thomes possibly could have explained the procedures for scheduling grievance hearings to Black in more detail, but I find that any failure on Thomes part in this regard does not constitute arbitrary conduct or a breach of duty. The General Counsel also argues that since Thomes had the authority to put Black's grievance on the schedule to be heard, he should have been able to expedite the process or provide more information to Black. However, General Counsel offered no evidence as to Thomes' reasoning in not scheduling Black's grievance for any of the hearings that took place in the interim. There is no evidence of bad faith in Thomes' choice and there could be many rational reasons why other grievances were scheduled for a hearing before Black's grievances, which Howard eluded to in his testimony (i.e., grouping of like grievances, pending for a longer period of time, involving more time sensitive issues, etc.). Black's grievance, being a request for additional pay, is not as time sensitive as other grievances, such as a wrongful termination, a discrimination claim, or other grievances regarding working conditions. There is no evidence that Black's grievances were treated with bad faith or differently than any of the other pending grievances at the time, especially other excessive overtime grievances.

At hearing, Black voiced a frustration over what he perceived as ever-increasing delays in grievance processing and asserted that those delays had increased during Howard's tenure as Respondent's president. Howard testified that his procedure for organizing and processing grievances is to place the files in chronological order in folders separated by each facility location. (Tr. 272.) There is no evidence that this procedure is inadequate or has failed in that a grievance file was lost or misplaced. Black's grievance was never lost or forgotten; it simply took longer than Black would like to be processed. General Counsel's argument that Respondent should have been able to quell Black's displeasure over this delay by providing him with information about when his grievances would be heard defies the reality that Respondent cannot fully control the scheduling of the local panel hearings, nor can Respondent predict whether more time-urgent grievances may take precedent over Black's grievance in the meantime. It is this type of internal union decisions that the Board and the Supreme Court have historically protected.

After filing a charge with the Board, there is no evidence that Black requested information about the status of his grievances until August 13, 2020. Black admitted that he does not need to be present for a grievance to be heard and Thomes has the discretion to inform grievants of the date and time of their grievance hearing on the local panel. (Tr. 174–175.) When Black’s grievances were heard on August 13, 2020, he was not singled out by Respondent in not being informed that his grievances were being heard. Black testified that several of his co-workers found out about the local panel hearing after the hearing had been concluded by receiving text messages that their grievances had been paid. Black did not receive a text message, likely because his grievances were not paid; they were deadlocked and were essentially still pending. When Black asked Thomes about the hearing, Thomes gave him all this information. Black was not treated arbitrarily or differently than other employees with excessive overtime grievances by not receiving information about the date of his hearing. Thomes had the discretion to decide whether the grievants needed to be present for that hearing. Absent some evidence that this choice negatively affected the processing of their grievances, I find the choice not to inform Black or any of the other grievants about the local panel hearing, does not constitute a breach in Respondent’s duty of fair representation.

As for Black’s frustrations with the general delay in the processing of grievances or the performances of Respondent’s officers, he and his fellow unit members have recourse through internal union elections. But when Respondent’s grievance processing procedures are not “arbitrary, discriminatory, or in bad faith,” Board and Supreme Court precedent is clear that a union’s internal processes are not to be second-guessed by the Board, in part, because unit members have recourse for expressing majority discontent with the performance of their union officers.

#### CONCLUSIONS OF LAW

1. International Brotherhood of Teamsters, Local 957 (Respondent) is a labor organization within the meaning of Section 2(5) of the Act.
2. United Parcel Service is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
3. Respondent has not violated Section 8(b)(1)(A) of the Act by breaching its duty of fair representation as alleged in the complaint.

#### REMEDY

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended.<sup>3</sup>

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<sup>3</sup> If no exceptions are filed as provided by Sec. 102.48 of the Board’s Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ORDER

The complaint is dismissed in its entirety.

Dated, Washington, D.C. October 27, 2020

A handwritten signature in black ink that reads "Kimberly Sorg - Graves". The signature is written in a cursive style with a horizontal line underneath it.

Kimberly Sorg-Graves  
Administrative Law Judge